

**Senate Bill No. 314**

(By Senators Kessler (Acting President), Edgell, Beach and  
Klempa)

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[Introduced January 27, 2011; referred to the Committee on  
Transportation and Infrastructure; and then to the Committee on  
Finance.]

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A BILL to amend the Code of West Virginia, 1931, as amended, by  
adding thereto a new article, designated §17C-17C-1, §17C-17C-  
2, §17C-17C-3, §17C-17C-4, §17C-17C-5 and §17C-17C-6, all  
relating to creation of the Temporary Natural Gas Resources  
Transportation Road System; providing legislative findings;  
creating regulatory program; defining certain terms; requiring  
Division of Highways to establish vehicle weight and size  
limits for public highways, including natural gas resource  
transportation roads; providing for temporary designation of  
natural gas resource transportation roads; requiring  
certification of natural gas permitting areas by the  
Department of Environmental Protection to Division of  
Highways; requiring exchange of certain information between

1 agencies; requiring certain road signs; providing for toll-  
2 free telephone line for public reporting of poor driving or  
3 violations; authorizing the Public Service Commission to  
4 administer the special permit program and to enforce this  
5 article; authorizing Public Service Commission to inspect  
6 certain trucking records; requiring study and report on  
7 commercial vehicle safety-related issues; authorizing  
8 emergency and legislative rules to effectuate purposes of the  
9 article; authorizing the Public Service Commission to issue  
10 permits and establish training and other requirements;  
11 authorizing Division of Highways to issue permits and  
12 establish certain requirements; requiring all natural gas well  
13 owners to obtain permit; providing that natural gas well  
14 owners are responsible for contractors; providing that all  
15 natural gas well owners in an area are responsible for the  
16 cost of road maintenance and repair; providing for suspension,  
17 revocation and modification of permits; providing for cease  
18 and desist orders in the interest of public safety; requiring  
19 accident reporting; and creating penalties for failing to  
20 report accidents.

21 *Be it enacted by the Legislature of West Virginia:*

22 That the Code of West Virginia, 1931, as amended, be amended  
23 by adding thereto a new article, designated §17C-17C-1, §17C-17C-2,  
24 §17C-17C-3, §17C-17C-4, §17C-17C-5 and §17C-17C-6, all to read as

1 follows:

2 **ARTICLE 17C. CREATION AND REGULATION OF NATURAL GAS RESOURCE**  
3 **TRANSPORTATION ROADS.**

4 **§17C-17C-1. Legislative findings and creation of program.**

5 (a) The Legislature finds and declares that:

6 (1) The vast potential for the development of the Marcellus  
7 Shale and other natural gas formations underlying West Virginia  
8 through the use of new exploration and production techniques  
9 currently has, and will continue to have, a tremendous impact upon  
10 the citizens of this state, providing an economic force and  
11 affecting the social construct and day-to-day life and environment  
12 of the people and communities of this state where the drilling and  
13 development occur.

14 (2) The historic progression of the natural gas industry and  
15 its potential for growth as the Marcellus Shale and other natural  
16 gas formations are tapped for unprecedented gas production results  
17 in an increasing use of the public highways of this state for the  
18 transportation of the massive drilling equipment, enormous amounts  
19 of water, sand, chemicals and other materials, both benign and  
20 hazardous. Roads where such equipment and materials are  
21 transported are mainly two-lane rural roads and highways of varying  
22 grades and conditions. The daily presence of large commercial  
23 motor vehicles on these roads and highways causes significant  
24 impact to local communities and the local transportation

1 infrastructure. Local residents are exposed on a daily basis to  
2 the dangers associated with sharing narrow rural roads with a large  
3 number of these vehicles.

4 (3) Although the development and drilling phases of natural  
5 gas production are generally for a period of one year or less, the  
6 effects of the development on the citizens and the infrastructure  
7 are acute and significant. The increased capacity and ability of  
8 the commercial vehicles to haul the equipment and materials  
9 necessary for the development of these well sites, tied with  
10 increased economic pressures to bring the wells on line as quickly  
11 as possible, have created economic incentives for transporting  
12 large quantities of equipment and materials, sometimes in  
13 commercial vehicles that are oversize or overweight. Regardless of  
14 whether the vehicles are of legal size and weight or are carrying  
15 excessive weight or are oversize, they cause the rapid  
16 deterioration of state roads and bridges, create significant costs  
17 to the state of millions of dollars in lost road and bridge use and  
18 life.

19 (4) The use of these vehicles on narrow, rural roads which  
20 were not designed nor intended for such large vehicles also puts  
21 the safety of all drivers on those roads at risk. Accidents  
22 involving large commercial vehicles on these rural roads may render  
23 the roads impassable for emergency vehicles as well as local  
24 residents for extended periods of time. The lack of communication

1 with local law-enforcement and responsible agencies regarding such  
2 accidents and traffic hazards is not only dangerous for the vehicle  
3 operators and local residents, it is illegal. The communication  
4 problem is exacerbated by the lack of cellular telephone service in  
5 many rural areas.

6 (5) Enforcement of truck safety and driver safety laws has  
7 been divided between various jurisdictions such as local and state  
8 law enforcement, the Division of Highways and the Public Service  
9 Commission. As a result, local and state enforcement of those  
10 comprehensive laws has not been uniform, with the result that many  
11 of these laws may not have not been enforced.

12 (6) The resulting need for a remedy for hauling equipment and  
13 materials to natural gas drilling sites is severe where the  
14 Marcellus Shale and other formations are being actively developed.  
15 As more natural gas is produced from these formations, every area  
16 of the state will be affected.

17 (7) Any remedy must include additional safety protections for  
18 the public sharing the roads with a large vehicle fleet and  
19 specialized training for operators of these vehicles, as well as  
20 requiring the program to be designed to assure that state weight  
21 and safety requirements are effectively administered and enforced.

22 (b) A special regulatory program with administrative  
23 enforcement authority over all vehicles hauling equipment and  
24 materials for natural gas drilling in West Virginia is created.

1 This program is designed to address the economic needs of the state  
2 natural gas industry within the confines of the ability of the  
3 transportation infrastructure to accommodate these needs and in  
4 careful consideration for road safety and maintenance requirements  
5 of these vehicles by providing for enhanced enforcement and safety  
6 requirements on natural gas resource transportation roads and  
7 allowing limited weight and size increases, above the currently  
8 allowable weight and size limits on these rural roads for vehicles  
9 hauling equipment and materials for natural gas drilling where an  
10 increase is required and where the infrastructure can sustain, or  
11 be made to sustain, the increased traffic and loads.

12 **§17C-17C-2. Definitions.**

13 For purposes of this article:

14 (a) "Commission" means the Public Service Commission of West  
15 Virginia.

16 (b) "Division" means the Division of Highways within the  
17 Department of Transportation.

18 (c) "Drilling activity" means the activity related to  
19 exploration and production of natural gas from a site for "well  
20 work" as defined in section one, article six, chapter twenty-two of  
21 this code.

22 (d) "Drilling site or well site" means the location of  
23 drilling activity.

24 (e) "Driver or Operator" means the person operating a

1 commercial motor vehicle transporting natural gas drilling  
2 equipment or materials on any public highway of this state.

3 (f) "Natural gas resource transportation road" means a road  
4 designated by the Department of Transportation as safe and  
5 sufficient to allow vehicles hauling equipment and materials to  
6 natural gas drilling sites to carry a greater gross and axle weight  
7 of up to one hundred and twenty thousand pounds, with a five  
8 percent variance.

9 (g) "Natural gas well owner" means any person, firm,  
10 partnership, partnership association or corporation that owns,  
11 manages, operates, controls or possesses such well as principal, or  
12 as lessee or contractor; employee or agent of such principal.

13 (h) "Vehicle owner" means the person who as owner of a  
14 commercial motor vehicle employs, contracts or otherwise directs a  
15 driver to operate that vehicle on a public highway of this state  
16 for the purpose of transporting equipment or materials to a natural  
17 gas drilling site.

18 **§17C-17C-3. Authority and duties of the Division of Highways;**  
19 **Department of Environmental Protection and Public**  
20 **Service Commission generally.**

21 (a) The Division of Highways shall establish all legal vehicle  
22 weight and size limits for all public highways including roads  
23 within the natural gas resource transportation road system. The  
24 Division of Highways shall establish a temporary road designation

1 of natural gas resource transportation road which shall apply only  
2 during the period of time that a natural gas drilling activity is  
3 underway. The designation shall be withdrawn when the drilling  
4 equipment is removed and the gas well is in production.

5 (b) Only state-maintained roads and public highways found in  
6 the areas certified by the Department of Environmental Protection  
7 as having active natural gas drilling sites in the Marcellus Shale  
8 or other such formations, where well work is ready to commence or  
9 is being conducted, shall may be included in the temporary natural  
10 gas resource transportation road system. The Department of  
11 Environmental Protection shall provide copies of the permit for  
12 well work and the application for the permit to the division and  
13 promptly advise the division when well work permits are issued,  
14 revoked or modified, if the modification would require a change to  
15 the list of natural gas resource transportation roads.

16 (c) The division shall post signs on natural gas resource  
17 transportation roads informing the public of the designation and  
18 shall also list a toll-free telephone line for public reporting of  
19 poor driving or law violations by special permit operators.

20 (d) The Public Service Commission shall administer the natural  
21 gas resource transportation road special permitting program and  
22 otherwise enforce the provisions of this article. The commission  
23 shall establish requirements for vehicle operators holding natural  
24 gas resource transportation road permits pursuant to section four

1 of this article consistent with federal statutory and regulatory  
2 requirements.

3       (e) The commission may, during normal business hours, conduct  
4 inspections of all trucking-related records of vehicle operators  
5 and owners engaged in the transportation of equipment and materials  
6 on natural gas resource transportation roads. Copies of records  
7 shall be provided to commission employees upon request. This  
8 provision may not be construed to authorize the commission to  
9 reveal trade secrets or other confidential financial information of  
10 those persons inspected; however the commission may use any weight  
11 measurement records as evidence of a violation of this article.

12       (f) The commission shall establish and maintain a toll-free  
13 telephone line for public reporting of poor driving or law  
14 violations by special permit operators. In addition, the  
15 commission shall require all vehicles operating under a special  
16 permit issued pursuant to the provisions of this article to clearly  
17 display on the vehicle the toll-free telephone number.

18       (g) The commission shall implement a study of commercial  
19 vehicle safety-related issues, including using higher education  
20 institutions and other research organizations. The commission  
21 shall provide periodic reports to the commercial motor vehicle  
22 weight and safety enforcement advisory committee as established in  
23 section two, article one-a, chapter twenty-four-a of this code  
24 relating to the study of motor vehicle weight and safety

1 enforcement.

2 (h) Notwithstanding the provisions of section three, article  
3 one, chapter twenty-nine-a of this code, the commission and the  
4 division shall each propose emergency and legislative rules for  
5 promulgation in accordance with the provisions of article three of  
6 said chapter to carry out their duties and responsibilities  
7 pursuant to the provisions of this article.

8 **§17C-17C-4. Special permits; training requirements; promulgation**  
9 **of rules.**

10 (a) The commission may issue permits to authorize  
11 transportation of equipment and materials on natural gas resource  
12 transportation roads if the vehicle driver meets training and  
13 safety requirements established by the commission. This special  
14 permit is in addition to any other permit or license required by  
15 law.

16 (b) Notwithstanding the provisions of section three, article  
17 one, chapter twenty-nine-a of this code, the commission shall  
18 promulgate emergency and legislative rules to effectuate the  
19 purposes of this section, which shall, at a minimum, provide for  
20 the following:

21 (1) Requirements for twenty-four hours of mandatory  
22 specialized training for commercial vehicles operators with less  
23 than two years of commercial driving experience and all commercial  
24 operators using the natural gas resource transportation roads who

1 have less than one year of commercial driving experience on  
2 mountainous rural roads;

3 (2) Requirements for random drug and alcohol testing;

4 (3) Mandatory reporting of accidents;

5 (4) Requirements for daily records consistent with the  
6 provisions of any applicable federal statutory or regulatory  
7 requirements;

8 (5) Permit fees; and

9 (6) Any other requirements determined to be necessary or  
10 appropriate by the commission.

11 (c) Special permits authorized by this section shall be issued  
12 by the commission on forms prescribed and furnished by it. The  
13 special permit indicium shall be carried on the person of the  
14 vehicle driver. Lost, destroyed, stolen or otherwise unusable  
15 special permits shall be replaced in accordance with legislative  
16 rules to be promulgated by the commission.

17 (d) Special permits issued pursuant to the provisions of this  
18 section are valid for a period of one year from the date of  
19 purchase: *Provided*, That no renewal permits shall be issued to any  
20 permittee who, at the time of the renewal, has any administrative  
21 or criminal actions pending relating to the operation of commercial  
22 motor vehicles in this or other states.

23 **§17C-17C-5. Natural gas well owner permits; promulgation of rules.**

24 (a) A natural gas well owner may not have, authorize or allow

1 equipment or materials to be transported over a natural gas  
2 resource transportation road without a natural gas well owner  
3 permit issued by the Commissioner of the Division of Highways. A  
4 natural gas well owner permit may be issued for a period not to  
5 exceed two years and may be renewed for an additional period not to  
6 exceed one year. All natural gas well owners currently conducting  
7 drilling activities shall apply for a natural gas well owner permit  
8 within thirty days of the enactment of this article by the  
9 Legislature in 2011. The natural gas well owner is responsible for  
10 the conduct of his or her contractors and subcontractors when they  
11 are using a natural gas resource transportation road.

12 (b) Natural gas well owner permits may include, but are not  
13 limited to, the following requirements:

14 (1) Pilot vehicles when required by the division;

15 (2) Creation and maintenance of vehicle pull off areas;

16 (3) Limitation on hours of operation of vehicles;

17 (4) Provide the division with an up-to-date list of  
18 contractors and subcontractors authorized by the natural gas well  
19 owner to transport equipment and materials on a natural gas  
20 resource road;

21 (5) Provide the division with an up-to-date list of the  
22 vehicles and equipment used by the contractors and subcontractors  
23 authorized by the natural gas well owner to transport equipment and  
24 materials on a natural gas resource road;

1           (6) Weight and length restrictions for commercial vehicles and  
2 loads as appropriate for the roads;

3           (7) Road improvements which may be required before, during and  
4 after completion of that portion of the well work that necessitates  
5 transportation of equipment and materials under this permit; and

6           (8) Performance bond in an amount sufficient to cover road  
7 repairs.

8           (c) If more than one natural gas well owner is operating in  
9 the same area, each owner is jointly and severally liable for the  
10 cost of road repair and maintenance.

11           (d) The division may suspend, revoke or modify a permit, after  
12 notice and opportunity to be heard, if the natural gas well owner  
13 violates the terms and conditions of the permit. If one or more  
14 violations, individually or in combination, endanger public safety  
15 the division may issue a cease and desist order requiring the  
16 immediate cessation of all well work and the transportation of  
17 equipment and materials until such time as the violation or  
18 violations are corrected and the public safety is no longer  
19 endangered.

20           (e) The division shall promptly notify the Department of  
21 Environmental Protection of natural gas well owner permit  
22 violations. The department shall suspend or revoke the well work  
23 permit when the natural gas well owner permit has been suspended or  
24 revoked or a cease and desist order has been entered by the

1 division.

2 (f) The division shall propose emergency and legislative rules  
3 for promulgation in accordance with the provisions of article  
4 three, chapter twenty-nine-a of this code to establish a schedule  
5 of permit fees and to effectuate the provisions of this section.

6 **§17C-17C-6. Accident reporting; penalties.**

7 (a) Whenever any accident occurs on or about a road designated  
8 as part of the natural resources transportation road system, it is  
9 the duty of the operator to notify, within fifteen minutes, the  
10 Division of Homeland Security and Emergency Management of the  
11 accident regardless of whether another vehicle is involved in the  
12 accident or whether any injuries occurred. It shall be posted in  
13 a conspicuous location in every vehicle whose operator has a permit  
14 for the natural gas resource transportation road system. If the  
15 accident occurs in an area where cellular telephone service is not  
16 available the operator shall, within five minutes, contact the  
17 drilling site or the trucking company's headquarters via radio.  
18 The radio operator at the drilling site or the trucking company's  
19 headquarters shall immediately notify the Division of Homeland  
20 Security and Emergency Management of the accident and its precise  
21 location.

22 (b) In addition to any other penalty or sanction provided by  
23 law, the Commissioner of the Division of Motor Vehicles shall  
24 suspend for a period of one year the driver's license of a

1 commercial vehicle driver if it is determined that the driver  
2 failed to give notice as required by this section. The  
3 Commissioner of Motor Vehicles may waive the suspension if he or  
4 she finds that failure to give notice of an accident was caused by  
5 circumstances wholly outside the control of the operator.

6 (c) In addition to any other penalty or sanction provided by  
7 law, the Commissioner of Environmental Protection shall impose a  
8 civil administrative penalty of \$50,000 on a natural gas well owner  
9 if it is determined that the radio operator failed to give notice  
10 as required by this section. The Commissioner of Environmental  
11 Protection may waive imposition of the civil administrative penalty  
12 if he or she finds that failure to give notice of an accident was  
13 caused by circumstances wholly outside the control of the radio  
14 operator.

NOTE: The purpose of this bill is to create the natural gas  
resources transportation road system and to regulate the  
transportation of equipment and materials on those roads.

This article is new; therefore, strike-throughs and  
underscoring have been omitted.